

1 has to read this thing.

2 MR. KELLER: You said wait until
3 November 4th. November 4th is when we are
4 providing these contracts and the ID of the
5 customers, but then you also said ten days
6 after the 21st.

7 JUDGE SIPPEL: That's right.

8 MR. KELLER: Which was when the
9 contract -- I would hope that any requests for
10 additional discovery could at least wait --

11 JUDGE SIPPEL: That's why they have
12 to come to me.

13 MR. KELLER: -- could at least wait
14 until they see that thing we file on December
15 the 1st.

16 JUDGE SIPPEL: That's why they have
17 to come to me.

18 MR. KELLER: Okay.

19 JUDGE SIPPEL: I'm not ruling
20 anything out, but believe me, nothing's going
21 to get by.

22 MR. KELLER: Okay.

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1 JUDGE SIPPEL: Unless I say it's
2 okay, for the time being.

3 MR. KELLER: All right.

4 JUDGE SIPPEL: Okay? I'm trying to
5 do -- I'm trying to meet everybody's needs,
6 reasonable needs. That's a reasonable need.

7 MR. KELLER: I appreciate that.

8 JUDGE SIPPEL: Mr. Geno?

9 MR. GENO: And I'd like to suggest,
10 Your Honor, that there is a pretty good
11 possibility that some of the sale contracts are
12 not going to be heard until the 28th or the
13 29th of November. Could we make that report,
14 rather than ten days after the 21st, could we
15 make it seven days after the 29th?

16 JUDGE SIPPEL: Sure.

17 MR. GENO: That would be much more
18 comprehensive, I think.

19 JUDGE SIPPEL: Sure.

20 MR. GENO: Thank you.

21 JUDGE SIPPEL: Do you have that?

22 MR. KELLER: Ten days, yes.

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1 JUDGE SIPPEL: January 29th, I'm
2 sorry, no. It's -- say that again.

3 MR. GENO: I said seven days after
4 the November 29th.

5 JUDGE SIPPEL: That's what I thought.
6 November 29th plus seven. Okay. What else do
7 we have? Okay, well, let me back up a little
8 bit, then. Do I assume from all this that you
9 really don't need those valuations that I was
10 hammering on earlier?

11 MS. KANE: I think, Your Honor --

12 JUDGE SIPPEL: The three
13 evaluations?

14 MS. KANE: -- it would be helpful to
15 have that.

16 JUDGE SIPPEL: For what?

17 MS. KANE: It's certainly a good
18 comparison of what the spectrum was worth then
19 compared to what it is now.

20 JUDGE SIPPEL: What it was thought
21 to be worth.

22 MS. KANE: What it was thought to be

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1 worth or -- certainly somebody with some
2 qualifications made that determination. It
3 wasn't just pulled out of thin air. So in
4 terms of the analysis that was done to
5 determine what that value was, certainly would
6 be pertinent, but --

7 JUDGE SIPPEL: Banks don't really
8 have a very good track record for assessing.

9 (Laughter.)

10 MS. KANE: I doubt it was the bank
11 that did it, Your Honor. I'm sure they took
12 some third party technical company that values
13 --

14 MR. KELLER: Your Honor?

15 MS. KANE: -- technology like this
16 all the time, and, you know, it's -- those
17 kinds of reports are used in litigation
18 repeatedly. So I --

19 MS. GOING: The debtor has -- the
20 debtor has submitted that valuation in their
21 bankruptcy petition as well, so they have to
22 hold it to some standard. They must believe

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1 it's true, because they provided that that was
2 the valuation of the spectrum in their
3 bankruptcy petition.

4 JUDGE SIPPEL: Well, then --

5 MR. KELLER: I'm going to come at
6 this again. Maybe I'm not making myself clear.
7 I guess my problem is not with providing the
8 valuations, to the extent that we have it.

9 My problem is that the continual
10 assertion that the valuation is somehow
11 relevant, that what people may think or assess
12 some kind of value of these licenses are in any
13 way relevant. What is going to be relevant is
14 what the actual sales contracts that come in
15 for the licenses are.

16 When sales contracts come in for the
17 licenses, to sell the licenses for X amount of
18 dollars, it doesn't matter what some valuation
19 three years ago said it was, or what some
20 extrapolation of the lease today says it is.

21 For Second Thursday purposes, it
22 just matters what that dollar amount is that

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1 the actual contract is going to bring into the
2 bankruptcy court, and how that money's going to
3 be distributed.

4 JUDGE SIPPEL: Well --

5 MR. KELLER: So, I mean, all this
6 talk about the value -- I don't agree that the
7 valuations are relevant to the Second Thursday
8 analysis.

9 MS. KANE: Your Honor, I would
10 disagree with that on the basis that this
11 valuation is an overall valuation of the entire
12 spectrum.

13 And what we've heard today is that
14 these contracts are piecemeal contracts for
15 only portions of the spectrum, so, again, going
16 back to what the Enforcement Bureau was talking
17 about, in terms of the Second Thursday
18 analysis, we're going to have to see how much
19 of the spectrum is actually being sold. And
20 this is a valuation of the entire spectrum.

21 JUDGE SIPPEL: Well, as long as --
22 thank you. That's true. But the nature of --

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1 you're in litigation now, you're not in some
2 other forum, and information which is relevant
3 is a very broad definition of relevance, under
4 our discovery rules, brings those evaluations
5 into play, for whatever purpose.

6 They may not be admissible as
7 evidence, when it comes down to that, but that
8 doesn't make any -- that's not a standard.
9 Particularly if it's available. They're not
10 creating an evaluation for the purposes of this
11 case. They've asked -- whatever is there the
12 Bureau is asking for, Mr. McFadden and his
13 counsel are looking for. That's all, and I
14 don't know what the hesitation is to give it to
15 them.

16 MR. KELLER: I told you, my problem
17 is not with whatever valuation we have. My
18 problem is with the continual reliance on, that
19 somehow that forms the Second Thursday
20 analysis. I don't think that --

21 JUDGE SIPPEL: Do you think that the
22 -- what, do you think that they somehow are

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1 going to be misused or used for an --

2 MR. KELLER: I think more arguments
3 are going to be made, that we're going to have
4 to spend time and legal expenses responding to
5 that are irrelevant.

6 JUDGE SIPPEL: I can't protect you
7 from arguments. With anything else in life,
8 but not that. It's there. So okay, you're
9 going get everything that they have on
10 evaluation, correct?

11 MS. KANE: Thank you, Your Honor.

12 JUDGE SIPPEL: And that's going to
13 be it. That'll be in my order. Now, I'm
14 relying on you all to work out the details.
15 And that will be, you know -- so your specific
16 pleading on this will be ample for, I'm sure,
17 everybody. And you get that to them in a day
18 or so, right?

19 MS. KANE: Absolutely, Your Honor.

20 JUDGE SIPPEL: Okay. Now, what else
21 is left? What else is left? The bank. You
22 really want that, you want to subpoena the

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1 bank?

2 MS. KANE: Yes, if that's the only
3 way that we can get the 2008 valuation of the
4 spectrum.

5 JUDGE SIPPEL: Is that true, Mr.
6 Seno, or Mr. Geno, I'm sorry.

7 MR. GENO: We do not have it yet,
8 Your Honor. We've asked for it, so I certainly
9 have no objection to a subpoena.

10 JUDGE SIPPEL: Well, sometimes a
11 subpoena becomes almost like a friendly
12 subpoena. I mean, as long as the bank has the
13 -- they live in this world that they think they
14 have to have a subpoena for everything they
15 give out, whether or not they need it or not.
16 Kind of like telephone records.

17 MS. KANE: Well, if Mr. Geno would
18 give us a contact, we'd be happy to contact the
19 bank.

20 JUDGE SIPPEL: Let's try it first
21 that way. Tell them the Judge is prepared to
22 give me subpoena, but would you do it without

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1 one, or do you need one? I rather tell them,
2 do you need a subpoena?

3 MS. KANE: Let's go with that.

4 JUDGE SIPPEL: And you'll come to me
5 with an application, and you'll have it the
6 same day.

7 MS. KANE: Thank you, Your Honor.

8 JUDGE SIPPEL: Okay, is there
9 anything else?

10 MR. MCFADDEN: Your Honor, if I may,
11 we spent quite a bit of time on the issue of
12 the spectrum valuation and the goal of that is
13 to determine whether the value of the assets
14 exceeds the value of debt owed to innocent
15 creditors, such that the hearing would have to
16 go forward in any event.

17 If I may, there is another issue
18 designated for hearing that is not affected by
19 the Second Thursday analysis.

20 JUDGE SIPPEL: Well, that's true.

21 MR. MCFADDEN: And that's the
22 question of whether certain of Maritime's site-

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1 based licenses terminated automatically for
2 failure to construct.

3 JUDGE SIPPEL: Oh, I'm sorry. I
4 wasn't thinking of that, but, yes, okay. Do
5 you follow that, Ms. Kane?

6 MS. KANE: Absolutely, Your Honor.

7 MR. MCFADDEN: And so, Your Honor,
8 we would suggest that, because that's not
9 impacted by a Second Thursday analysis, the
10 hearing should proceed, at a minimum with
11 respect to that issue.

12 JUDGE SIPPEL: How does that strike
13 you, Mr. Keller?

14 MR. KELLER: Well, Your Honor, I
15 think, again, it is our hope and desire to
16 resolve that issue outside the context of
17 hearing, if possible, after these other Second
18 Thursday issues are dealt with. In other
19 words, if -- first of all, we don't anticipate
20 coming back for a hearing on that at all. I
21 mean --

22 JUDGE SIPPEL: Why?

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1 MR. KELLER: We're going to find
2 some way to resolve it through a combination of
3 a summary decision or some sort of -- like,
4 when I say a hearing, actually the litigating.

5 JUDGE SIPPEL: Yes.

6 MR. KELLER: I think we're going to
7 be able to present facts sufficient for a
8 summary decision. Now, granted, there may be
9 arguments about that, on the question of
10 construction. On the question of permanent
11 discontinuance there is not going to be a
12 factual dispute.

13 In other words, there is not going
14 to be a factual dispute about whether a station
15 is or is not off the air. The issue is going
16 to be strictly a legal argument about whether
17 or not the discontinuance of that station
18 constitutes a permanent discontinuance, and
19 that's going to be a legal analysis.

20 MR. MCFADDEN: That, Your Honor --
21 I'm sorry.

22 MR. KELLER: So that's, basically,

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1 it. But, all I would say is I would also
2 address this in the comprehensive filing about
3 what our proposal is for dealing with this, and
4 whether it would require any further hearing or
5 not. But we're going to do our very best to
6 make sure that there is no need for further
7 full-blown hearing issues on that question.

8 JUDGE SIPPEL: I understand --

9 MR. KELLER: Your Honor --

10 JUDGE SIPPEL: Well, let me hear
11 from Mr. McFadden.

12 MR. MCFADDEN: Your Honor, if I may,
13 what Mr. Keller has just said suggests that the
14 hearing on the question of the site-based
15 licenses could be very expeditious. You know,
16 I don't think there's any reason to delay it.

17 Just, to take a step back, where we
18 are in this proceeding is that the Commission
19 designated for hearing, among other issues, the
20 question of whether Maritime's licenses
21 terminated automatically, and thus, no longer
22 exist.

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1 The Commission designated that as an
2 issue for hearing before Your Honor. Maritime
3 has moved, essentially, to stay the hearing
4 based on the application of the Second Thursday
5 doctrine. That application has nothing to do
6 with the issue of the site-based licenses, and
7 there's no reason to stay the hearing with
8 respect to that issue, Your Honor.

9 JUDGE SIPPEL: Well, I mean, you
10 said you're going to proceed -- you're thinking
11 of a summary decision.

12 MR. KELLER: Well, that's one
13 possible resolution. See, the other --

14 JUDGE SIPPEL: Well, it's got to be
15 resolved some way.

16 MR. KELLER: It's got to be
17 resolved.

18 JUDGE SIPPEL: It's got to be
19 resolved in this forum.

20 MR. KELLER: It's got to be resolved
21 some way in this forum, but also what will
22 happen under Second Thursday is, if the other

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1 licenses are resolved under Second Thursday,
2 these particular licenses -- that particular
3 issue, excuse me, is not a basic qualifying
4 issue, and so there is, then, the possibility
5 of resolving this during negotiating
6 settlement, as well. It wouldn't exist for a
7 basic qualifying issue.

8 JUDGE SIPPEL: It wouldn't exist for
9 a basic qualifying issue.

10 MR. KELLER: What I'm saying is,
11 we're working hard to come up with a way of
12 resolving these in either some sort of an
13 expedited hearing or a non-hearing process,
14 which, obviously, will have to be agreed to or
15 cooperated with by the other parties, and I
16 will include that in the comprehensive filing
17 that we make.

18 Part of the reason of not going
19 forward right now is, I mean, quite frankly, we
20 don't have -- we're not able to finance the
21 litigation of that issue at the moment.

22 MS. KANE: Well, Your Honor, that

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1 shouldn't be an excuse for not --

2 JUDGE SIPPEL: I never --

3 MS. KANE: -- going forward with
4 litigation.

5 JUDGE SIPPEL: -- heard of that
6 basis of defense.

7 MR. KELLER: That's the nature of
8 bankruptcy.

9 JUDGE SIPPEL: Well, I know, but
10 it's the nature of enforcement that -- I just
11 can't, I can't buy that.

12 And, I mean, and also, I mean, the
13 way you described to me what that construction
14 issue is about, and the intent to permanently
15 discontinue as opposed to not permanently
16 discontinue, that leaves a question of fact
17 open right there.

18 MS. KANE: Well, Your Honor, we've
19 served discovery, as has Mr. Havens, directed
20 to these very issues, and none of that
21 discovery has been responded to.

22 So should Your Honor agree that this

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1 hearing should proceed with regard to those
2 issues, certainly, both the Bureau and Mr.
3 Havens would be entitled to responses to the
4 discovery that's directed to that issue.

5 JUDGE SIPPEL: Well, I'll tell you
6 what to do. Send me up -- that is, get to me,
7 again, request relief to pursue discovery on
8 that issue and outline what the scope of that
9 discovery would be.

10 MS. KANE: We can do that, Your
11 Honor.

12 JUDGE SIPPEL: That's all. It
13 doesn't have to be a -- I mean, it's up to me.
14 I will make it, it's up to me to decide whether
15 I want to get further pleas, and I might do it
16 right on that or -- in other words, I'm not
17 expecting that it's going to be successfully
18 objective, let me say that, without predicting
19 what the outcome is going to be. I'll figure
20 that one out. That's my problem. Your problem
21 is just getting it in.

22 MS. KANE: We can do that, Your

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1 Honor.

2 JUDGE SIPPEL: And my intention on
3 that would be to have a minimum of discovery
4 and get that issue right on the table, while
5 all this other stuff is floating around. I'm
6 not going to hold an issue up until after
7 everything else is done.

8 I mean, how are you going to be any
9 richer after you go through bankruptcy than you
10 are now?

11 MR. KELLER: Understood.

12 JUDGE SIPPEL: Or maybe you can get
13 a local public defender or something, I don't
14 know. For that issue.

15 MR. KELLER: We have those here?

16 JUDGE SIPPEL: For that issue.
17 Well, that'll take care -- well never mind. I
18 know you're not going to go down that road.
19 I'm certainly saying is that that issue has to
20 be litigated, and there's no reason to hold it
21 up.

22 Okay, and also we've got the

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1 forfeiture question. I do not know what it is,
2 but you said that you think you're going to
3 take care of forfeiture, like it's not a
4 problem. How you going to do that without any
5 money?

6 MR. KELLER: We were going to agree
7 we're going to allocate a portion of the
8 proceeds to voluntary contribution in lieu of
9 the forfeiture, and also, if the company ends
10 up with no money, they have no money to pay a
11 forfeiture with, too. That's another point.

12 JUDGE SIPPEL: Well, get the
13 promissory note and --

14 MR. KELLER: Yes.

15 JUDGE SIPPEL: Well, if I have to --
16 I don't think there's ever -- I mean, there's
17 no final answer to any of those things --

18 MR. KELLER: True.

19 JUDGE SIPPEL: -- right here today.
20 I'm really sorry, because I know that I'm
21 running the tab up on this case.

22 MR. KELLER: It's all right.

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1 JUDGE SIPPEL: I think we're all set
2 for everything we're going to -- yes, sir.

3 MR. RICHARDS: Jack Richards, Your
4 Honor. As I mentioned at the beginning of the
5 hearing, we represent four oil and gas
6 companies, one of which, at this point, despite
7 as much fun as it is to participate in this
8 hearing, has had enough, and has filed a motion
9 to withdraw its notice of appearance. May we
10 have a ruling --

11 JUDGE SIPPEL: Oh, I'm sorry.

12 MR. RICHARDS: -- on that?

13 JUDGE SIPPEL: Yes. I have it here,
14 I wrote it down, in fact, to quickly address
15 that and then get an original order out on it.

16 MR. RICHARDS: It was unopposed.

17 JUDGE SIPPEL: Yes, it was. And
18 it's been a while. Motion to withdraw and
19 orders of appearance.

20 MR. RICHARDS: Okay.

21 JUDGE SIPPEL: And as applied by Mr.
22 Jack Richards. Yes, sir. I apologize.

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1 MR. RICHARDS: Thank you, Your
2 Honor.

3 (Simultaneous speaking.)

4 MR. RICHARDS: I would also like to
5 take a minute --

6 JUDGE SIPPEL: You're right.

7 MR. RICHARDS: -- to follow up on
8 Mr. Zdebski's comments and Mr. Plache's
9 comments about the nature of the applicants in
10 this proceeding, because I'm concerned --

11 JUDGE SIPPEL: Are you back on the
12 case again? I thought you just withdrew.

13 MR. RICHARDS: We still have four
14 other clients in this hearing.

15 JUDGE SIPPEL: Oh, okay. I see.
16 Right.

17 MR. RICHARDS: And that includes
18 three oil and gas companies, and one electric
19 utility.
20 The oil and gas companies need the frequencies
21 to control pipelines. The electric utility
22 needs the frequencies to control its electric

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1 distribution system.

2 These are critical infrastructure
3 companies, as are the other applicants in this
4 proceeding. All totaled, the original 12
5 assignment applications involved four oil and
6 gas companies, seven electric utilities, and
7 one railroad.

8 The Commission, in the hearing
9 designation order, allowed the railroad to show
10 why its application should be removed from the
11 hearing. The railroad showed that, and the
12 Commission hasn't ruled on it yet.

13 Our clients, and a group of others,
14 filed a petition for reconsideration before the
15 Commission, supporting the railroad, and
16 requesting that because these are also critical
17 infrastructure companies, their applications
18 also be removed from the hearing process. The
19 Commission didn't act on it. We filed a
20 request for expedited action because these
21 companies need these frequencies. The
22 Commission still hasn't ruled on our request.

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1 The Bureau takes the position that
2 Jefferson Radio prohibits a grant of these
3 applications. Jefferson Radio was a broadcast
4 case. We briefed that issue in our petition
5 for reconsideration. We don't agree with that.

6 We cited cases in here holding that
7 the deferral of all action on all of the
8 licenses held by a multiple licensee, like this
9 one, pending a final resolution of character
10 issues raised by alleged misconduct, may
11 operate to the detriment of the public
12 interest.

13 We cited cases the decision of
14 whether to approve a license transfer "turns
15 upon a balancing of the public interest
16 considerations favoring the free
17 transferability of the licensee's interests
18 against the Commission's long-term interest in
19 deterrence to determine whether, on the whole,
20 the public interest weighs in favor of free
21 transferability."

22 The Commission has found that the

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1 weight for allowing free transferability of
2 licenses is greater in the non-broadcast
3 context, such as here, than in the broadcast
4 context.

5 We concluded at a citation with this
6 quotation. "In view of these significant
7 differences between broadcast and non-broadcast
8 services, we believe that no valid purpose
9 would be served here by applying our broadcast
10 policy of prohibiting transfers when there are
11 outstanding character issues to be resolved
12 against the transferor.

13 The facts in this case reveal
14 clearly that no harm to the public will occur
15 by accepting these applications from our normal
16 policy and that, to the contrary, the public
17 interest will be served by a transfer of these
18 facilities to a qualified applicant. Thus
19 we'll allow the transfer."

20 There's no question that has been
21 raised about the qualifications of these
22 applicants to receive these licenses.

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1 JUDGE SIPPEL: I --

2 MR. RICHARDS: They need the
3 frequencies, and they have been held up now for
4 up to two years in trying to get them, to the
5 point where one of them, an oil and gas company
6 that needs the frequencies, has thrown in the
7 towel.

8 JUDGE SIPPEL: Well I'm very
9 sympathetic to that, but I can't do anything
10 about it.

11 MR. MCFADDEN: Your Honor, just --

12 JUDGE SIPPEL: Go ahead.

13 MR. MCFADDEN: -- a few quick points
14 on that. First, those applications are all
15 subject to pending petitions to deny, which is
16 what we're doing in this proceeding.

17 Second, with all due respect to Mr.
18 Richards, I don't believe you have any
19 authority to act for the Commission with
20 respect to that pending petition for
21 reconsideration --

22 JUDGE SIPPEL: Well, that's just

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